

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
East Tennessee Radio Group, L.P.)	
)	File Number EB-02-AT-231
Owner of Antenna Structure Registration No.)	
1063413 in Sevierville, Tennessee)	NAL/Acct. No.200232480010
)	
Dalton, Georgia)	FRN 0005-0880-67
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: June 27, 2002

By the Enforcement Bureau, Atlanta Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that East Tennessee Radio Group, L.P. (“East Tennessee”), owner of antenna structure no. 1063413 in Sevierville, Tennessee, willfully violated Sections 17.4(g), and 17.57 of the Commission's Rules (“Rules”),¹ by failing to display the Antenna Structure Registration (“ASR”) number, and failing to notify the Commission of a change in ownership of the structure. We find East Tennessee Radio Group, L.P. apparently liable for forfeiture in the amount of five thousand dollars (\$5,000).

II. BACKGROUND

2. On May 15, 2002, an agent of the FCC Enforcement Bureau’s Atlanta Field Office (“Atlanta Office”) inspected the antenna structure of WSEV(AM) in Sevierville, Tennessee.² The agent observed no posting of the ASR number on or near the tower, its fence, building, gate, or anywhere on the property.

3. On May 15, 2002, the agent inspected radio station WSEV(AM) at its studios in Sevierville, Tennessee. The agent advised East Tennessee that the antenna structure registration number was not posted. The agent subsequently interviewed the station’s chief engineer who

¹ 47 C.F.R §§ 17.4(g), and 17.57.

² East Tennessee is the licensee of radio station WSEV(AM) as well as owner of the antenna structure.

stated that the ASR posting had been vandalized some time ago and had not been reposted. FCC records indicated that the owner of the antenna structure was Dollywood Broadcasting. However, East Tennessee advised the agent that they are the owners of the antenna structure and that Dollywood Broadcasting was the previous owner of the antenna structure.

III. DISCUSSION

4. Section 17.4(g) of the Rules requires the ASR Number be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure. The antenna structure was observed on May 15, 2002, and no ASR number was posted. Section 17.57 of the Rules requires the owner to immediately notify the Commission using FCC Form 854 upon any change in ownership. Commission records reflect the structure's previous owner.

5. Based on the evidence before us, we find East Tennessee willfully³ violated Sections 17.4(g), and 17.57 of the Rules by failing to post the ASR number and failing to report changes in structure ownership.

6. Pursuant to Section 1.80(b)(4) of the Rules,⁴ the base forfeiture amount for failure to file required forms or information (e.g., failure to notify the Commission of a change in ownership information) is \$3,000. The Rules do not establish a base forfeiture amount for failure to post the antenna structure registration number.⁵ The Commission has determined, however, that an appropriate base forfeiture amount for failure to post the ASR number is \$2,000 per violation.⁶ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷ Considering the entire record and applying the factors listed above, this case warrants a \$5,000 forfeiture.

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ 47 C.F.R. § 1.80(b)(4).

⁵ See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines ("Forfeiture Policy Statement")*, 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999). The *Forfeiture Policy Statement* states that "... any omission of a specific rule violation from the ... [forfeiture guidelines] ... should not signal that the Commission considers any unlisted violation as nonexistent or unimportant. *Forfeiture Policy Statement*, 12 FCC Rcd at 17099. The Commission retains the discretion, moreover, to depart from the *Forfeiture Policy Statement* and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act. *Id.*

⁶ *American Tower Corporation*, 16 FCC Rcd 1282 (2001).

⁷ 47 U.S.C. § 503(b)(2)(D).

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁸ and Sections 0.111, 0.311 and 1.80 of the Rules,⁹ East Tennessee Radio Group, L.P. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of five thousand dollars (\$5,000) for willful violation of Sections 17.4(g) and 17.57 of the Rules, by failing to display the Antenna Structure Registration number, and failing to notify the Commission of a change in ownership of the structure.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this *Notice of Apparent Liability*, East Tennessee Radio Group, L.P. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this *Notice of Apparent Liability* under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. IT IS FURTHER ORDERED THAT a copy of this *Notice of Apparent Liability* shall

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹⁰ See 47 C.F.R. § 1.1914.

be sent by regular mail and Certified Mail Return Receipt Requested to East Tennessee Radio Group, L.P., P. O. Box 1284, Dalton, GA 37862.

FEDERAL COMMUNICATIONS COMMISSION

Fred L. Broce
District Director
Atlanta Office, Enforcement Bureau